

*CI + Security*

OLL 85-1743  
25 June 1985

MEMORANDUM FOR: General Counsel

FROM:

[Redacted]

Chief, Legislation Division  
Office of Legislative Liaison

STAT

SUBJECT: S.J. Res. 148 - National Commission  
on Espionage and Security

1. Attached for your information is a copy of a joint resolution introduced by Senator Byrd to create a "National Commission on Espionage and Security". Also attached are the Senator's remarks upon introduction of this resolution. This resolution was considered as an amendment to the FY-1985 Supplemental Appropriations Bill (H.R. 2577), but was defeated (50-48) by the Senate on 20 June 1985. A copy of the floor debate concerning this resolution also is attached for your information.

2. The resolution follows, obviously, in the wake of the Walker espionage case. It would create a Commission to investigate the vulnerability of the United States Government to penetrations by hostile foreign governments. Membership of the Commission will be drawn from both the Executive and Legislative Branches. The Commission is vested with broad subpoena power and the power to compel testimony under oath. In addition, government agencies are required to supply the Commission with all information necessary to the conduct of its activities. The Commission would be required to report on its findings and recommendations within 18 months.

3. While the resolution was narrowly defeated (50-48) by the Senate, Senator Stevens specifically stated that this "amendment would be back in another form". We have been in touch with Gary Chase, SSCI, and will be providing him with some talking points opposing this resolution for use on the Hill. We obviously will monitor this proposed legislation very closely and will keep you apprised of any further developments in this regard.

[Redacted]

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Attachment  
as stated

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STAT

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CONGRESSIONAL RECORD — SENATE

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But whether or not additional user fees are imposed, the future of the river transportation industry appears bleak, some analysts say. One recent report sponsored by the U.S. Maritime Administration recommends that owners begin to scrap idle barges.

Surplus barges have contributed to the depression. Farrell, of the Waterways Operators organization, attributed the economic woes of the industry to three major factors:

The building of excess barges and towboats in the late 1970's and early 1980s, leading to a massive surplus. That construction was spurred by changes in tax laws and by the anticipation of huge increases in grain and coal exports—increases that failed to materialize.

The grain embargo in 1980 against the Soviet Union. The embargo adversely affected U.S. grain exports and the amount of grain carried by barges.

The world oil glut. That has cut down on the demand for U.S. coal, so less coal is being transported on the river. ●

#### ORDER FOR RECESS TODAY UNTIL 11:00 A.M. TOMORROW

Mr. MCCLURE. Mr. President, I ask unanimous consent that, upon the conclusion of the remarks of the distinguished Senator from West Virginia and/or the hour of 5:30 p.m. having arrived, the Senate then stand in recess until the hour of 11 a.m. on tomorrow.

The PRESIDING OFFICER (Mr. HATCH.) Is there objection? Without objection, it is so ordered.

#### NATIONAL COMMISSION ON ESPIONAGE AND SECURITY

Mr. BYRD. Mr. President, the published reports which have come to my attention since the first arrest was made in the Walker spy case have made it clear to me that there is a compelling need for the Congress to take urgent and aggressive action with respect to our Government's ability to cope with Soviet espionage.

It has been reported that 4.3 million Americans have received security clearances from our Government and therefore have access to the most sensitive Government information relating to our national defense. Every one of these individuals is a potential prime target for recruitment for the hundreds of Soviet KGB agents who roam our streets.

The Defense Department is said to have only 1,500 civilian investigators who this year are expected to conduct 220,000 sensitive clearance investigations of military and defense contractor personnel.

The Federal Bureau of Investigation, which has the primary responsibility for tracking Soviet espionage in the United States, is said to be unable to cope with the huge number of suspected Soviet agents in this country.

The mountains of Government paper marked "confidential," "secret," and "top secret" seem to grow ever higher each day, and the entire classification system is said to be held in disrepute.

Assertions continue that the top levels of our Government, including the CIA itself, may have been penetrated by the KGB. Others strongly disagree. No one seems to know for sure.

The Walker case is said to involve an individual alleged to have been spying for the Soviets for as long as 20 years, and no one even suspected it.

This situation simply cannot be allowed to continue. We must take immediate action to uncover the scope and magnitude of this problem and then take strong and effective action to correct it. We in the Congress cannot authorize billions of dollars for the most sensitive and sophisticated defense and intelligence systems, only to learn that the details of those systems have been turned over to our adversaries by employees of our own Government.

I have therefore prepared legislation which I am introducing today to establish a National Commission on Espionage and Security to investigate this problem. The Commission would be directed to investigate—efforts which may have been made by hostile foreign powers to penetrate our Government—the adequacy of counterintelligence investigations by the United States to detect and protect against such penetrations; and—the adequacy and effectiveness of the classification system, background security investigations, and the whole question of security clearances. The Commission will be authorized to hold hearings, issue subpoenas, and have full and complete access to whatever information it may need to fulfill its task.

The Commission will be required to report on its findings and recommendations in 18 months.

The Commission that will be created by this resolution will consist of eight members, to be appointed as follows: Four would be appointed by the President of the United States, including one former Secretary of Defense, one former Director of Central Intelligence, and one former special assistant to the President for national security affairs; one would be appointed by the President of the Senator from the majority Members of the Senator upon the recommendation of the majority leader of the Senate; one would be appointed by the President of the Senate from the minority Members of the Senator upon the recommendation of the minority leader of the Senate; one to be appointed by the Speaker of the House of Representatives from the majority Members of the House; and one to be appointed by the Speaker of the House for the minority Members of the House upon recommendation of the minority leader of the House.

The members of the Commission would select the chairman and the vice chairman.

The Commission would be authorized to employ and fix the compensation of such persons or consultants as it deems necessary and appropriate

subject to certain provisions of the legislation. The Commission will be authorized to hold hearings, take testimony and depositions under oath, and do everything necessary and appropriate which is authorized by law to make the investigation and study specified.

The Commission would be authorized and directed to make a complete investigation and study which would reveal the full facts with respect to the nature and extent of recent penetrations of the U.S. Government or efforts to penetrate by hostile foreign powers to obtain the information that is described in the resolution; the extent and the adequacy of efforts of the United States to protect against such penetrations; the adequacy and effectiveness of the classification system; background investigations conducted for security clearances; systems involving the issuance of clearances; security systems, counterintelligence investigations, counterespionage investigations, damage assessments, relevant Federal laws, Executive orders, directives and policies, investigative, prosecutorial and expulsion policy, treaties, and other international agreements to which the United States is a signator; and such other related matters as the Commission deems necessary in order to carry out its responsibility.

The Commission would have the power to issue subpoenas requiring the attendance of witnesses and testimony of witnesses and the production of information relating to a matter under investigation by the Commission.

Mr. President, I talked with former President Carter yesterday, and he stressed the need for prompt action by our Government in this subject area. He felt that it was a good concept and that we need to proceed. He indicated that he would be happy to appear and testify as a witness should he be called upon by the Commission. I tried to reach President Nixon yesterday, but he was out of the country. Today, he is back in the country and I have talked with him and he felt that it was time to move to protect our country against those who would sell our country "down the river."

He made some helpful suggestions to me and, likewise, indicated his willingness to appear as a witness before the Commission, if asked to do so.

I also talked on yesterday with former Secretary of Defense Harold Brown, who was in California but returned last evening to the Nation's Capital. He likewise joined in expressing support for the effort and is happy to support and appear before the Commission for testimony if the Commission should see fit to call upon him.

Mr. President, I have talked with President Reagan earlier this afternoon, and he indicated that he would be happy to have a look at the resolution and seemed to be supportive and, in any event, very interested.

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Mr. President, I think it would be very worthwhile if former Directors of the CIA were asked to respond for the purpose of testimony. I talked with former CIA Director Admiral Turner on yesterday, and he expressed strong support for the idea and likewise, as have the others with whom I talked, indicated a ready willingness to appear before the Commission and work with the Commission in any way, should the Commission see fit to call on him. I have not been able to talk with other former Directors of the CIA, Mr. Colby, Mr. Helms, and others, and I have not yet been able to reach Dr. Schlesinger. I called him on yesterday, but he was in Europe, I believe, and will be returning to the United States this evening or tomorrow. I have not yet had an opportunity to talk to former President Ford, but I certainly hope to do so.

Mr. President, I have just completed a telephone conversation with former security advisor, Mr. Brzezinski. He said that the whole security apparatus is due for an examination and it is long overdue. He was quite enthusiastic about such a commission.

Mr. President, I hope that the administration and my colleagues on both sides of the aisle will be supportive of the resolution that I will submit today. We are all in this together. Both the executive and the legislative branches have much to contribute toward examining the problem and coming up with responsible and effective solutions. This is a bipartisan approach which I am suggesting to deal with a nonpartisan problem.

I am not going after anybody that I can think of as I introduce this resolution. I am not attempting to blame one administration or another, one party or another. As I see it, our objective, simply put, is to find the holes in our Nation's security fabric and to close them for the future, with no scapegoats. It is simply a serious and fundamental problems which goes to the very heart of the effective defense of our Nation.

Mr. President, I ask unanimous consent that I may have until 7 o'clock today to introduce the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I also ask unanimous consent that the resolution be printed in the Record.

There being no objection, the resolution was ordered to be printed in the Record, as follows:

S.J. RES. 148

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,*

That (a) there is hereby established a national commission which may be called for convenience of expression, the National Commission on Espionage and Security, to conduct an investigation and study with respect to the adequacy of counterespionage, counterintelligence and security activities of the United States in the protection of vital secret (1) defense, (2) foreign policy, and (3) intelligence information of the United

States against the efforts of hostile foreign powers to obtain such information, as further described in section 3 below.

(b) The Commission created by this resolution shall consist of eight members, to be appointed as follows:

(1) Four to be appointed by the President of the United States, including one former Secretary of Defense, one former Director of Central Intelligence, and one former Special Assistant to the President for National Security Affairs.

(2) One to be appointed by the President of the Senate from the majority Members of the Senate upon the recommendation of the majority leader of the Senate.

(3) One to be appointed by the President of the Senate from the minority Members of the Senate upon the recommendation of the minority leader of the Senate.

(4) One to be appointed by the Speaker of the House of Representatives from the majority Members of the House; and

(5) One to be appointed by the Speaker of the House of Representatives from the minority Members of the House upon the recommendation of the minority leader of the House.

(c) The members of the Commission shall select a chairman and a vice chairman. Vacancies in the membership of the Commission shall not affect the authority of the remaining members to execute the functions of the Commission and shall be filled in the same manner as the original appointments to it are made.

(d) A majority of the members of the Commission shall constitute a quorum for the transaction of business, but the Commission may affix a lesser number as a quorum for the purpose of taking testimony or depositions.

(e) To enable the Commission to make the investigation and study authorized and directed by this resolution, the Commission is authorized to employ and fix the compensation of such persons as it deems necessary and appropriate, subject to the provisions of Section 12(c) below.

Sec. 2. The Commission is authorized to hold hearings, take testimony and depositions under oath, and to do everything necessary and appropriate which is authorized by law to make the investigation and study specified in subsection (a) of the first section.

Sec. 3. Without abridging in any way the authority conferred upon the Commission by the preceding section, the Commission is authorized and directed to make a complete investigation and study which will reveal the full facts with respect to:

(a) The nature and extent of recent penetrations of, or efforts to penetrate, the United States Government by hostile foreign powers to obtain the information described in section 1(a);

(b) The extent and adequacy of efforts by the United States to detect and protect against such penetrations;

(c) The adequacy and effectiveness of:

(1) The classification system;

(2) Background investigations conducted for security clearances;

(3) Systems involving the issuances of such clearances;

(4) Security systems;

(5) Counterintelligence investigations;

(6) Counterespionage investigations;

(7) Damage assessments;

(8) Relevant Federal laws, executive orders, directives, and policies;

(9) Investigative, prosecutorial and expulsion policy; and

(10) Treaties and other international agreements to which the United States is a signatory.

(d) Such other related matters as the Commission deems necessary in order to carry out its responsibilities.

Sec. 4. Subject only to other provisions of this resolution, all departments, agencies and other components, and all officials and other employees, of the United States Government are authorized and directed to:

(a) Extend full and complete cooperation to the Commission

(b) Render such assistance as the Commission may request

(c) Provide such information and testimony, whether at hearings or by interview or deposition, as the Commission may request.

(d) Provide access to all records, writings, documents and other materials as the Commission may request.

Sec. 5. (a) The Commission, or any member of the Commission when so authorized by the Commission, shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of information relating to a matter under investigation by the Commission. A subpoena may require the person to whom it is directed to produce such information at any time before such person is to testify. Such attendance of witnesses and the production of such evidence may be required from any place within the jurisdiction of the United States at any designated place of interview or hearing. A person to whom a subpoena issued under this subsection is directed may, for cause shown, move to enlarge or shorten the time of attendance and testimony, or may move to quash or modify a subpoena for the production of information if it is unreasonable or oppressive. In the case of a subpoena issued for the purpose of taking a deposition upon oral examination, the person to be deposed may make any motion permitted under rule 26(c) of the Federal Rules of Civil Procedure.

(b)(1) In case of contumacy or refusal to obey a subpoena issued to a person under this section, a court of the United States within the jurisdiction of which the person is directed to appear or produce information or within the jurisdiction of which the person is found, resides or transacts business, may upon application by the Attorney General, issue to such person an order requiring such person to appear before the Commission, or before a member of the Commission, or a member of the staff of the Commission designating the Commission for such purpose, there to give testimony or produce information relating to the matter under investigation, as required by the subpoena. Any failure to obey such order of the court may be punished by the court of a contempt thereof.

(2) The Commission is an agency of the United States for the purpose of rule 81(a)(3) of the Federal Rules of Civil Procedure.

(c) Process of a court to which application may be made under this section may be served in a judicial district wherein the person required to be served is found, resides, or transacts business.

Sec. 6. A court of the United States within the jurisdiction in which testimony of a person in custody is sought by the Commission or within the jurisdiction of which such person is held in custody, may, upon application by the Attorney General, issue a writ of *habeas corpus ad testificandum*, requiring the custodian to produce such person before the Commission, or before a member of the Commission or a member of the staff of the Commission designated by the Commission for such purpose.

Sec. 7. The Commission is an agency of the United States for the purpose of part V of title 18 of the United States Code.

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Sec. 8. (a) Process and papers issued pursuant to this resolution may be served in person, by registered or certified mail, by telegraph, or by leaving a copy thereof at the residence or principal office or place of business of the person required to be served, when service is by registered or certified mail, or by telegraph, the return post office receipt or telegraph receipt therefor shall be proof of service. Otherwise, the verified return by the individual making service, setting forth the manner of such service shall be proof of service.

(b) A witness summoned pursuant to this resolution shall be paid the same fees and mileage as are paid witnesses in the courts of the United States, and a witness whose deposition is taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Sec. 9. (a) The investigative activities of the Commission are civil or criminal law enforcement activities for the purposes of section 552a(b)(7) of title 5, United States Code, except that section 552a(c)(3) shall apply after the termination of the Commission.

(b) The Commission is a Government authority, and an investigation conducted by the Commission is a law enforcement inquiry, for the purposes of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.). Any delay authorized by court order in the notice required under that Act shall not exceed the life of the Commission, including any extension thereof. Notwithstanding a delay authorized by court order, if the Commission elects to publicly disclose the information in hearings or otherwise, it shall give notice required under the Right to Financial Privacy Act a reasonable time in advance of such disclosure.

Sec. 10. Conduct which, if directed against a United States attorney, would violate section 1111 or 1112 of title 18, United States Code, shall, if directed against a member of the Commission, be subject to the same punishments as are provided by such sections for such conduct.

Sec. 11. The functions of the President under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App. 10(d)), shall be performed by the Chairman of the commission.

Sec. 12. (a) The Commission shall adopt rules and procedures (1) to govern its proceedings; (2) to provide for the security of records, documents, information, and other materials in its custody and of its proceedings; (3) to prevent unauthorized disclosure of information and materials disclosed to it in the course of its inquiry; (4) to provide the right to counsel to all witnesses examined pursuant to subpoena; and (5) to accord the full protection of all rights secured and guaranteed by the Constitution of the United States.

(b) No information in the possession of the Commission shall be disclosed by any member or employee of the Commission to any person who is not a member or employee of the Commission, except as authorized by the Commission and by law.

(c) The term "employee of the Commission" means a person (1) whose services have been retained by the Commission, (2) who has been specifically designated by the Commission as authorized to have access to information in the possession of the Commission, and (3) who has agreed in writing and under oath to be bound by the rules of the Commission, the provisions of this resolution, and other provisions of law relating to the nondisclosure of information.

Sec. 13. The Commission shall make a final report of the results of the investigation, together with its findings and its rec-

ommendations to the President and to the Congress, at the earliest possible date, but no later than March 1, 1987. The Commission may also submit such interim reports as it considers appropriate. After submission of its final report, the Commission shall have three calendar months to close its affairs, and on the expiration of such three calendar months shall cease to exist.

Sec. 14. There are authorized to be appropriated for the fiscal year ending September 30, 1986 such sums as are necessary to carry out the activities of the Commission.

Mr. BYRD. Mr. President, if any Senator seeks the floor, I will be glad to relinquish it. This is my 75th speech on the subject, "The United States Senate" over a period of 5 years.

## THE U.S. SENATE

## CONGRESSIONAL REFORM: THE LEGISLATIVE REORGANIZATION ACT OF 1946

Mr. BYRD. Mr. President, when we think back to the nineteenth century Senate, we can easily conjure up images of senators who enjoyed sufficient leisure to do their own research, draft their own legislation, and to write lengthy speeches. Most members had no other office space than their desks in the Senate chamber or in their boardinghouse quarters near the Capitol Building. Today, the sites of many of those boardinghouses are covered with House and Senate office buildings where members have quarters that only barely seem to accommodate the increasing requirements of their diverse constituencies. In the middle of the last century, members who required staff assistance purchased it out of their personal funds during the usually abbreviated legislative year.

After World War I, demands on members' time and attention escalated rapidly as improved means of transportation and communication brought the electorate and the elected into greater proximity. As the national government assumed a greater role in the lives of everyday citizens, pressures on Congress multiplied. And as the 1920's gave way to the Great Depression and the New Deal era of the 1930's, Congress demonstrated increasing inability to legislate with the deliberation and expertise that had characterized its course during the seemingly less complicated nineteenth century.<sup>1</sup>

Congress had slight opportunity to dwell on matters of internal organization and support during the Depression and New Deal years. By 1940, however, many members were becoming painfully aware of the fate of representative bodies around the world at the hands of totalitarian regimes. Many recognized that a strong, effective Congress was the best protection against executive tyranny, foreign and domestic. Later that year, House Speaker Sam Rayburn warned that the ability or our democracy to survive

was directly related to the ability of Congress to balance demands for adequate discussion against demands for prompt and effective action. Rayburn stressed the necessity of independent "technical competence" as the foundation of a solid legislative program. "A great national legislature cannot safely rely on the technical assistance and advice which private interests are willing to provide."<sup>2</sup>

Jerry Voorhis, a Democratic representative from California, was an early and persistent critic of Congress' inability to maintain a strong and co-equal role in the federal system. He warned that the future of constitutional government would be in jeopardy unless Congress insisted on exercising its traditional responsibilities with a force and vigor equal to that of the Franklin Roosevelt administration.<sup>3</sup>

Congress in 1941, was ill-equipped to accept the Voorhis and Rayburn challenges. At that time, of every seven dollars it authorized the federal government to spend, Congress spent only one cent on itself.<sup>4</sup> Its 3,200-member staff was predominantly clerical and custodial with not more than two hundred persons who could be considered legislative professionals. Senators were required to use their office clerks as the principal staff of any committee they chaired, thus ignoring professional competence as the foundation for committee staffing.<sup>5</sup> This situation encouraged the traditional practice of creating additional committees as sources of prestige, office space, and extra staff for their chairmen.

On the eve of Pearl Harbor, Congress remained reluctant to supply itself with independent sources of expertise. Librarian of Congress Archibald MacLeish argued in vain for increased funding of his Legislative Reference Service. He justified his request on the assumption that the Congress had the right to "scholarly research and counsel in law, and history and economics at least equal to that of people who come before committees" from the executive branch and private interest groups.<sup>6</sup>

Strong opposition in the House of Representatives killed MacLeish's hopes of revitalizing his understaffed and obscure reference service. In the Senate, in June 1941, a similar fate awaited a measure introduced by Senator A.B. "Happy" Chandler of Kentucky. Chandler proposed that the Senate allow each member to hire one "research expert" at a competitive salary. His proposal died because many senators apparently believed it would establish a cadre of "political assistants" who would eventually be in a position to compete for their jobs.<sup>7</sup> The opposition had deep roots in the members' self-image. Congressmen feared the public would view the appropriation of tax dollars for staff experts as an open confession of mem-



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commission. We cannot afford to conduct business as usual and just forget the problem or hope that it will go away.

Mr. President, I urge the adoption of the amendment.

Mr. JOHNSTON. Mr. President, I rise to support this amendment. I wish to emphasize the bipartisan—certainly nonpartisan—nature of this amendment. As one of the prime cosponsors, it never entered my head that it would be anything but that—that is, a group that could give us the best of information in this very sensitive area, very timely area of great concern to our country.

I hope that the commission would, in fact, look into the adequacy of our activities in any field of terrorism. I think we have, as we have all found out, very few intelligence assets in the Middle East in general, and in Lebanon in particular. Whether there is anything that we can do about that from a grand policy standpoint I think would be a very appropriate and productive area for this commission to look into, as well as that which the distinguished minority leader discussed; that is, the question of security clearances.

An idea that the distinguished occupant of the Chair had and which I supported in the Appropriations Committee—that is, the use of the lie detector to test security clearances—is also an area which I think could be appropriately looked at by this commission. I am told that the lie detector is a very, very useful tool in determining the reliability—not just the truthfulness but the reliability—of those with security clearances. I also share the view that it is a very sensitive area. We want to be sure that there are adequate safeguards in the use of that lie detector so that it may not be used as an article of political revenge or that it be misused or any of those things. I think that could appropriately be looked into by this commission.

The idea of a commission as opposed to the use of one of our standing committees, I think, is also very good and very timely. We have in this country ex-directors of the CIA and the Defense Intelligence Agency whose names are well-known throughout this country, whose reputations are above reproach, and who come from both political parties.

It seems to me that their appointment to this commission, should they be willing to serve, would be a national asset of great value, drawing upon their judgment and their experience. It seems to me they could give this commission a broadness of view and a depth of expertise that is not likely to be equaled by any mechanism other than this kind of bipartisan commission.

So, Mr. President, I strongly support this legislation and hope it will be approved.

The PRESIDING OFFICER. The Chair, in his capacity as the Senator

from Alaska, suggests the absence of a quorum.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that I may be authorized to modify the amendment in two places, one being with respect to paragraph (b)(1) on page 1 of the amendment which I have before me, the other one being the paragraph that provides for the funding of the commission.

The PRESIDING OFFICER. Is there an objection? Without objection, it is so ordered.

Will the Senator send the modification to the desk?

Mr. BYRD. Yes. Let me say, Mr. President, that paragraph (b)(1) of the amendment which I hold in my hand, which is the amendment that is available and on each desk, presently reads as follows—and this is with respect to the appointment by the President of the United States of a four-member commission:

Four to be appointed by the President of the United States, including one former Secretary of Defense, one former Director of Central Intelligence, and one former Special Assistant to the President for National Security Affairs.

Mr. President, I do modify, having been given consent from the Senate, that paragraph by placing a period following the words "United States" and striking out the remaining words in that sentence, so that phrase, which now would require the President to include among his four appointees one former Secretary of Defense, one former Director of Central Intelligence, and one former Special Assistant to the President for National Security Affairs—that would be stricken and the remaining words would be these: "Four to be appointed by the President of the United States."

The PRESIDING OFFICER. The Senator has that right under the unanimous consent previously granted to him.

Mr. BYRD. I make that modification, Mr. President, because the distinguished present occupant of the chair, the distinguished Senator from Alaska (Mr. STEVENS) stated on the floor a moment ago his concern about that language. I can understand his feeling that way. The distinguished majority leader also has expressed his concern to me about that particular language. I can understand the concern. I can only say that I hope the President would carefully consider appointing a former Secretary of Defense, a former Director of Central Intelligence, and a former Special Assistant to the President for National Security Affairs, but I have now deleted that language from the amendment as a requirement.

The other modification, Mr. President, I will make in a moment after conversation with the distinguished chairman of the Committee, Mr. HARTFIELD, and the distinguished ranking member, Mr. JOHNSTON. But for now I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURENBERGER. Mr. President, I rise in opposition to the amendment by my good friend and colleague, the Democratic leader. And I am not in the unfortunate position of rising as a committee chairman and I am going to make a statement that says we do all these things; we do not always do them well. But we, in effect, have these things in place. My great colleague, who has been here so much longer than I, has heard this; but I trust that he will listen to at least a part of it, and perhaps there is in the structure of his amendment some room for accommodating to the concerns that I will express. I do not know at this time whether there is such room, but I trust that he may find that kind of room.

Our colleague from West Virginia has been an ex officio member of the Senate Select Committee on Intelligence since its inception. He had a substantial role to play personally in the creation of the Committee on Intelligence, and I trust that, therefore, he will be especially sensitive to some of the comments I will make about the impact that this Commission can have on the objectives he is trying to achieve.

I thought perhaps we would find some support from the administration in making this case. I find, in the statement I just referred to of the majority leader, as being the administration's position on commissions, that the administration opposes the statutory establishment as unnecessary; they oppose it on the ground that there are existing mechanisms; they oppose it on the theory that the executive branch has primary responsibility and on the theory of constant cooperation. There may be some of that in my statement as well, but I think we need to go just a little further.

Before my colleagues vote on this issue, let me give them just a little information and perhaps education on the role that they play, as Members of this body, in resolving some of the problems of security and espionage.

Mr. President, I sympathize with my good friend from West Virginia, who has long been an ex officio member of the Select Committee on Intelligence. He has been a steadfast

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supporter of U.S. intelligence and I greatly admire him for it.

I oppose my good friend's amendment, however, for I fear that his proposal would retard, rather than advance, the adoption of improved counterintelligence and security practices. I am confident, moreover, that the executive branch and the Senate Select Committee on Intelligence can better accomplish what the minority leader seeks to achieve than will a National Commission.

The state of American counterintelligence and information security is a matter of great concern to us all. The security of our country may not depend entirely upon this, but betrayals and intelligence penetrations are a sure way to undo years of devoted and costly efforts by loyal Americans.

We have good reasons to be concerned regarding these matters. The Walker family spy ring alone is enough to warrant our attention. From what we read in the papers, it may have gone on for two decades; it involved two generations, as well as friends and other relatives; it involved chief warrant officers, the cream of the crop of Navy enlisted men, who have made this country's security at sea their careers; and it may have compromised vital information on U.S. weapons systems, communications, and operational patterns.

Other recent cases are equally bothersome. In Los Angeles, we are witnessing the first trial of an FBI agent for espionage in our history. A man in New York has been indicted on charges of spying while he worked for the CIA. And news stories assert that the Soviet Union bugged U.S. Embassy typewriters in Moscow for years, giving them access to a steady stream of important information.

The Select Committee on Intelligence is deeply disturbed by these events. We are determined to learn the causes of the current situation and to help bring about major improvements in it.

The Select Committee on Intelligence and its House counterpart have given high priority to counterintelligence and security problems ever since the creation of the committees in 1976. Under our first chairman, Senator DANIEL INOUYE of Hawaii, the FBI counterintelligence budget was included for the first time in the overall National Foreign Intelligence Program. Later we passed the Foreign Intelligence Surveillance Act, which gave our counterintelligence agencies a secure and constitutional means of wiretapping suspected spies. This has proved to be an invaluable arm in the arsenal of security.

An Intelligence Committee study several years ago also led to passage of the Classified Information Procedures Act, which limits the impact of gray-mail defenses that threaten the release of more classified information in spy cases. The increase in espionage prosecutions in recent years is due

partly to greater protection for classified information that this act has provided. As Assistant Attorney General Stephen S. Trott told the Washington Post the "graymail" Act gives the Government "the capacity to surface and prosecute (spies) without compromising national security or letting defense lawyers spew secrets all over the place."

Under Chairman Goldwater, the committee took the lead in calling for increased resources for FBI, CIA, and Defense Department counterintelligence operations. We also passed the Intelligence Identities Protection Act to stop one especially dangerous form of intelligence compromise.

This year, as part of the Intelligence Authorization Act for fiscal year 1986, the committee recommended legislation to address the Soviet intelligence threat that was later passed by the Senate in the form of amendments to the Department of State authorization. And this year, as in every other year, we have used the budget authorization process to address the performance of U.S. counterintelligence elements in the various agencies.

Earlier this year, the select committee began planning a broad review of U.S. counterintelligence and security programs. On June 11, 1985, the committee agreed to begin a comprehensive review of the Soviet intelligence threat and U.S. counterintelligence and security programs. This review is to be done within the context of the committee's continuing oversight responsibilities and will include an examination of the implications for national security growing out of the Walker case and others. Topics to be addressed include:

Changes in the nature and extent of Soviet espionage operations both within the United States and against U.S. installations and interests overseas;

The reasons behind the record number of espionage cases in the last year;

How effectively U.S. counterintelligence agencies have utilized the increased resources made available to them by the Congress; and

What needs to be done to improve security so that truly sensitive information and operations are better protected.

The committee intends to examine all aspects of the problem, including the classification system, the personnel security system and the communications security system, as well as computer and other forms of technical and operational security. We are in the process of holding a series of closed hearings and briefings. We also look forward to cooperating with the executive branch and benefitting from the internal reviews underway in the Defense Department and other agencies.

We have instructed our staff to coordinate with other interested Senate committees. In particular, the select

committee expects to follow up on the recommendations of Senators NUNN and ROTH of the Permanent Subcommittee on Investigations, which has completed an investigation of shortcomings in the Government's Security Clearance Program.

The aim of the committee is to prepare a full report on the adequacy of U.S. counterintelligence and security programs and the improvements needed to protect the national security in these fields. As indicated in letters that Vice Chairman LEAHY and I have recently sent, we solicit the suggestions and views of all Members of the Senate as we begin this task.

A National Commission on Security and Espionage, Mr. President, is more likely to retard progress on these issues than it is to further it. If we truly want to improve security practices, we must convince departments and agencies to change entrenched ways of doing things. That is how simple it is. No commission is going to get the bureaucracy of this country to change its habits. It is difficult enough for us in the Senate and the people in the House to take advantage of situations like the Walker case to do some of the things we are now able to get them to do. The people who must do that are the leaders of those agencies, not a group of outsiders, no matter how distinguished.

What will happen if we establish a National Commission? The first thing is that people in the bureaucracy who are resistant to change will say that nothing can be done until after the Commission completes its work and issues its report. So any chance for early improvement will be quashed.

That is a record which has been replicated for many, many commissions. The bureaucracy will tell you they cannot do anything to comply with your desires until the Commission completes its work and issues its report.

The consequence of that is that all of the work that we need to do in 1985 that we need to implement in 1987 will all be postponed at least until after this commission makes its report in 1987.

A second likely consequence is that the issues of security and counterintelligence will become politicized. First there will be the usual jousting over the membership and staff of the Commission. Then there will be inevitable conflicts between the Commission and executive branch personnel who will resist the thought of disclosing our deepest counterintelligence secrets to an outside body. And then there will be watering down of conclusions, as Members with diverse views and political constituencies try to arrive at compromise recommendations.

Mr. President, I submit to my colleagues that this country needs better security, better counterintelligence, and better counterespionage. But rather than piecing together a politi-

cally balanced group of outsiders, we must encourage our top policymakers to bite the bullet themselves and take needed action. Rather than disclosing counterintelligence secrets to more outsiders, we should use the institutions already in place to handle such information—including our own Select Committee on Intelligence.

Rather than settling for the watered-down 3-year-old recommendations which will eventually come out of this Commission, we should demand a hard-nosed examination of these issues that leads to real improvements in our counterintelligence and security posture.

I am confident, Mr. President, that both the executive branch and we are currently sufficiently energized to deal with these issues speedily and forthrightly. The White House is clearly as concerned as we are regarding the need for improvement, and the Select Committee on Intelligence has received assurances of close cooperation from counterintelligence officials and top policymakers.

I know what motivates my good friend from West Virginia. I am thinking of it as I am reading the statement, that as soon as John Walker and his family are off the front pages, the issue may well also leave the top priority of our concerns in this Senate. That may very well be, from his experience, one of the reasons that our colleague feels strongly about the need to continue to focus the attention of the country on the issue.

I must say, however, Mr. President, while I agree with that theory, it is also the responsibility of this body to do something about it and I fear greatly that turning it over to a commission, postponing any work on counterespionage and counterintelligence policy for 3 years, just is not the way to make sure this job gets done.

It is our responsibility here to force these changes on the administration, not the responsibility of an outside agency.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. EVANS). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### AMENDMENT NO. 368 AS FURTHER MODIFIED

Mr. BYRD. Mr. President, I had indicated earlier my desire to modify the amendment in respect to the last provision in the amendment. I modify what is now an open-ended funding provision, so as to specify that the funding be limited to \$900,000.

I have discussed this with the distinguished manager and the distinguished ranking minority manager, and it is their feeling that it should not be seen as an open-ended funding mechanism, and I think we have come

to the conclusion that a \$900,000 cap would be a reasonable modification.

I so modify my amendment.

The PRESIDING OFFICER. Without objection, the amendment is modified.

The modified amendment is as follows:

(b) The Commission created by this resolution shall consist of eight members, to be appointed as follows:

(1) Four to be appointed by the President of the United States.

(2) One to be appointed by the President of the Senate from the majority Members of the Senate, upon the recommendation of the majority leader of the Senate;

(3) One to be appointed by the President of the Senate from the minority Members of the Senate upon the recommendation of the minority leader of the Senate;

(4) One to be appointed by the Speaker of the House of Representatives from the majority Members of the House; and

(5) One to be appointed by the Speaker of the House of Representatives from the minority Members of the House upon the recommendation of the minority leader of the House.

(c) The members of the Commission shall select a chairman and a vice chairman. Vacancies in the membership of the Commission shall not affect the authority of the remaining members to execute the functions of the Commission and shall be filled in the same manner as the original appointments to it are made.

(d) A majority of the members of the Commission shall constitute a quorum for the transaction of business, but the Commission may affix a lesser number as a quorum for the purpose of taking testimony or depositions.

(e) To enable the Commission to make the investigation and study authorized and directed by this resolution, the Commission is authorized to employ and fix the compensation of such persons as it deems necessary and appropriate, subject to the provisions of Section 12(c) below.

SECTION 2. The Commission is authorized to hold hearings, take testimony and depositions, under oath, and to do everything necessary and appropriate which is authorized by law to make the investigation and study specified in subsection (a) of the first section.

SECTION 3. Without abridging in any way the authority conferred upon the Commission by the preceding section, the Commission is authorized and directed to make a complete investigation and study which will reveal the full facts with respect to:

(a) The nature and extent of recent penetrations of, or efforts to penetrate, the United States Government by hostile foreign powers to obtain the information described in section 1(a);

(b) The extent and adequacy of efforts by the United States to detect and protect against such penetrations;

(c) The adequacy and effectiveness of:

(1) The classification system;

(2) Background investigations conducted for security clearances;

(3) Systems involving the issuance of such clearances;

(4) Security systems;

(5) Counterintelligence investigations;

(6) Counterespionage investigations;

(7) Damage assessments;

(8) Relevant Federal laws, executive orders, directives, and policies;

(9) Investigative, prosecutorial and expulsion policy; and

(10) Treaties and other international agreements to which the United States is a signatory.

(d) Such other related matters as the Commission deems necessary in order to carry out its responsibilities.

SECTION 4. Subject only to other provisions of this resolution, all departments, agencies, and other components, and all officials and other employees, of the United States Government are authorized and directed to:

(a) Extend full and complete cooperation to the Commission;

(b) Render such assistance as the Commission may request;

(c) Provide such information and testimony, whether at hearings or by interview or deposition, as the Commission may request;

(d) Provide access to all records, writings, documents and other materials as the Commission may request.

SECTION 5. (a) The Commission, or any member of the Commission when so authorized by the Commission, shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of information relating to a matter under investigation by the Commission. A subpoena may require the person to whom it is directed to produce such information at any time before such person is to testify. Such attendance of witnesses and the production of such evidence may be required from any place within the jurisdiction of the United States at any designated place of interview or hearing. A person to whom a subpoena issued under this subsection is directed may for cause shown move to enlarge or shorten the time of attendance and testimony, or may move to quash or modify a subpoena for the production of information if it is unreasonable or oppressive. In the case of a subpoena issued for the purpose of taking a deposition upon oral examination, the person to be deposed may make any motion permitted under rule 26(c) of the Federal Rules of Civil Procedure.

(b)(1) In case of contumacy or refusal to obey a subpoena issued to a person under this section, a court of the United States within the jurisdiction of which the person is directed to appear or produce information, or within the jurisdiction of which the person is found, resides or transacts business, may upon application by the Attorney General, issue to such person an order requiring such person to appear before the Commission, or before a member of the Commission, or a member of the staff of the Commission designated by the Commission for such purpose, there to give testimony or produce information relating to the matter under investigation, as required by the subpoena. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

(2) The Commission is an agency of the United States for the purpose of rule 81(a)(3) of the Federal Rules of Civil Procedure.

(c) Process of a court to which application may be made under this section may be served in a judicial district wherein the person required to be served is found, resides, or transacts business.

SECTION 6. A court of the United States within the jurisdiction in which testimony of a person held in custody is sought by the Commission or within the jurisdiction of which such person is held in custody, may, upon application by the Attorney General, issue a writ of habeas corpus ad testificandum requiring the custodian to produce such person before the commission, or before a member of the Commission or a member of the staff of the Commission des-

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ignated by the Commission for such purpose.

SECTION 7. The Commission is an agency of the United States for the purpose of part V of title 18 of the United States Code.

SECTION 8. (a) Process and papers issued pursuant to this resolution may be served in person, by registered or certified mail, by telegraph, or by leaving a copy thereof at the residence or principal office or place of business of the person required to be served. When service is by registered or certified mail, or by telegraph, the return post office receipt or telegraph receipt therefor shall be proof of service. Otherwise, the verified return by the individual making service, setting forth the manner of such service shall be proof of service.

(b) A witness summoned pursuant to this resolution shall be paid the same fees and mileage as are paid witnesses in the courts of the United States, and a witness whose deposition is taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

SECTION 9. (a) The investigative activities of the Commission are civil or criminal law enforcement activities for the purposes of section 552a(b)(7) of title 5, United States Code, except that section 552a(c)(3) shall apply after the termination of the Commission.

(b) The Commission is a Government authority, and an investigation conducted by the Commission is a law enforcement inquiry, for the purposes of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*). Any delay authorized by court order in the notice required under that Act shall not exceed the life of the Commission, including any extension thereof. Notwithstanding a delay authorized by court order, if the Commission elects to publicly disclose the information in hearings or otherwise, it shall give notice required under the Right to Financial Privacy Act a reasonable time in advance of such disclosure.

SECTION 10. Conduct, which if directed against a United States attorney would violate section 111 or 1114 of title 18, United States Code, shall, if directed against a member of the Commission be subject to the same punishments as are provided by such sections for such conduct.

SECTION 11. The functions of the President under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App. 10(d)) shall be performed by the Chairman of the Commission.

SECTION 12. The Commission shall adopt rules and procedures (1) to govern its proceedings; (2) to provide for the security of records, documents, information, and other materials in its custody and of its proceedings; (3) to prevent unauthorized disclosure of information and materials disclosed to it in the course of its inquiry; (4) to provide the right to counsel to all witnesses examined pursuant to subpoena; and (5) to accord the full protection of all rights secured and guaranteed by the Constitution of the United States.

(b) No information in the possession of the Commission shall be disclosed by any member or employee of the Commission to any person who is not a member or employee of the Commission, except as authorized by the Commission and by law.

(c) The term "employee of the Commission" means a person (1) whose services have been retained by the Commission, (2) who has been specifically designated by the Commission as authorized to have access to information in the possession of the Commission, and (3) who has agreed in writing and under oath to be bound by the rules of the Commission, the provisions of this reso-

lution, and other provisions of law relating to the nondisclosure of information.

SECTION 13. The Commission shall make a final report of the results of the investigation, together with its findings and its recommendations to the President and to the Congress, at the earliest possible date, but no later than March 1, 1987. The Commission may also submit such interim reports as it considers appropriate. After submission of its final report, the Commission shall have three calendar months to close its affairs, and on the expiration of such three calendar months shall cease to exist.

SECTION 14. There is authorized to be appropriated and is appropriated for the remainder of the fiscal year ending September 30, 1985, and the fiscal year ending September 30, 1986, \$900,000.00.

The names of Mr. BAUCUS and Mr. LAUTENBERG were added as cosponsors of the amendment (No. 268) as further modified.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I greatly respect the position as expressed by the distinguished chairman of the Committee on Intelligence, Mr. DURENBERGER.

Let me say that I do not see this commission, if and when it is established, as being something that would take away from the Intelligence Committee its right to proceed with whatever investigations it wishes to make and to offer whatever recommendations on national security it may wish to make to Congress.

I see this problem as a national need now, and I think it is an extremely serious need. It seems to me that the Intelligence Committee always has a tremendous burden of workload—all that it can deal with, with the many problems that may be related or unrelated to this subject area demanding that committee's attention.

It seems to me that we need a commission that can put its full time, its total effort, its total strength into the study and investigation of this serious problem.

I have tremendous respect for the Senate Committee on Intelligence. I have a tremendous respect for the chairman and ranking member of the Senate Committee on Intelligence. I would want it understood that, in my judgment, the amendment that I have presented should not in any way imply a lack of confidence in the Senate Intelligence Committee.

But in this situation, I feel that the problem is so great and so immediate, that there needs to be a commission which can give its full time to this particular massive problem.

As far as I am concerned, I would recommend to the President pro tempore of the Senate that Mr. LEAHY,

the ranking member of the Intelligence Committee of the Senate, be the Senate minority's member. That could be done very easily.

There is no suggestion here that the Senate Intelligence Committee is not doing its work and not doing it properly. I simply feel that, with this onrushing flood of alarming revelations that we are seeing almost daily with respect to the commission of treason, at least the appearance thereof for the moment, a full-time commission ought to be temporarily established.

Also, Mr. President, I understand that the administration is opposed to these amendments I see on the letterhead of this memorandum which I hold in my hand, these words, "Statement of Administration's Policy," dated June 20, "With respect to Committee on Espionage and National Security, Byrd amendment." I will read the following paragraph, which is short:

The administration opposes the statutory establishment of a National Commission on Espionage and Security as unnecessary. There are existing mechanisms for dealing with this problem in the executive branch and in the Congress. The President and the executive branch have primary responsibility in this area. This administration fully intends to cooperate with the Congress in addressing the questions of espionage and its threat to national security.

Mr. President, again, I think that this problem is so immediate, so massive, and so threatening to our country that we ought to move ahead with a commission that can spend its full time in developing recommendations for the Congress.

I have already indicated that my conversations with former Presidents, former Secretaries of Defense, former Directors of the CIA, and former national security advisors, resulted in a unanimous feeling that we ought to move in this direction and also a unanimous expression of the willingness on the part of those individuals with whom I talked to appear before the commission at any time, if asked, to provide advice and counsel to the commission.

So I would hope, Mr. President, that the distinguished Senator, Mr. DURENBERGER, would not feel that this amendment is a reflection on the Senate Intelligence Committee. Far be it; it is just the opposite.

Mr. DURENBERGER. Will the Senator yield?

Mr. BYRD. I am glad to yield.

Mr. DURENBERGER. Mr. President, let me respond briefly to that. I appreciate the sensitivity of the Senator from West Virginia to both where the chairman may come from on the issue and the importance of intelligence oversight in this body. I also very much appreciate his deep concern for the measures that need to be taken and I suppose the public commitment that needs to be built under some of these measures.



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But the point I tried to make in my statement was not to reflect so much a sensitivity on my part, as chairman of the committee, or on the part of the committee itself, as to reflect the realities that any of us who have been members of that committee for any length of time have to address with regard to what I will call the bureaucracy of the intelligence community.

If, in fact, the problem that is attempted to be addressed by this commission is espionage, if that problem is and immediate problem, as our colleague from West Virginia says that it is, if it is a massive problem, that is, that it is covering a lot of media in the security sense, that it poses a large threat, if you will, to the conduct of national security policy, and if it is, as he says, threatening, then the solutions to the problem must come immediately, they must be on a massive scale and they must threaten the espionage by the Soviet Union directed against this country.

That is precisely why the committee has been building a record within the bureaucracy that I talked about earlier to address this problem. It probably would have been a lot larger if it had not been for the leadership of BARRY GOLDWATER over the last 4 years, and two Members of this body from the other side of the aisle in the previous 4 years.

We are engaged in what I would consider a massive effort within the committee to take on the bureaucracy and we happen to be doing it with the help of the administration. I mean, the leadership in the administration understands the problems much as we do.

What I fear, Mr. President, is not that this commission will not come up with a set of brilliant recommendations. I have talked to these same leaders. I talked to the experts. I have talked to Bobby Inman and all the rest of these people who are now on the outside. They have said the same thing to me as they have said to the Democratic leader, "Please, this is a problem we need to deal with." I took that message very seriously. The committee is taking that seriously.

The committee has charted a course to come up with some answers to this problem within the course of this year, not within the course of an 18-month period of time that expires somewhere out in early 1987, the end result of which is then you turn over results to the bureaucracy for them to digest and chew up and defend and come back.

My point is, simply, I do not think we have any disagreement on the need. The question is whether or not that need can be addressed. If it is an immediate problem, a massive problem and a threatening problem, then can we get it done in an immediate way and in a massive way that is genuinely threatening to the Soviet Union by bringing all these experts into the process that is already underway in

this body—and hopefully it will be on the House side as well—to get some solutions to this problem in the near term, not in 1987, not in 1988?

If it is publicity we want, we will be more public in a part of this investigation. We always intended to do that anyway. So if that is the function of the commission, fine. But I must again reiterate we do not have any disagreement about what we are trying to accomplish. The difference is those of us who oppose this commission want it done as soon as possible, and not postpone the result to some period of time. We also are sensitive to the fact that many of you know the bureaucracy will shut down on this issue the minute the Commission is created. When we go in the Intelligence Committee to try to pound on them on the espionage, and try to pound them on counterintelligence, I know what they are going to say. They are going to say I am sorry, Senator, but you decided there is going to be a big commission with all of these former Secretaries of State working on this, we are not going to cooperate with you. We will help the Commission, and in 18 months we will tell you what we ought to do. That is the reaction of the bureaucracy whether it is the IRS, Commerce Department, State Department, or the intelligence community.

Mr. STEVENS. Will the Senator yield?

Mr. DURENBERGER. Yes.

Mr. STEVENS. Would not the Senator agree, though, that the problem right now is that we have investigations in the executive branch, we have investigations in the House, and we have investigations in the Senate, but there is no process legally to hotwire this so we can get going, get the total engines of the Government going to see what we can do to stop the damage that we are suffering as a result of this espionage, and to see what we can do to tighten up our security procedures?

The Senator from Minnesota can do everything he says, and the legislation still resulting from his effort would have to go over to the House, the House would then hold hearings, and their deliberations would be subject to the same criticism from downtown that my colleague mentioned. I am not talking about the administration. I am talking about the bureaucracy.

The idea of a rifle-shot commission is not new. Is not this the way we handled problems in the Social Security system—by establishing the Social Security Commission? We have done it in other situations where we identified serious national problems. I do not know of another national problem that reaches the scope, in terms of the cost to the taxpayer or the loss to the security of the United States, the recent espionage that we have suffered. It is not just the Walker case. It is cases that have been going on since the Falcon and the Snowman, since all of the rest of the cases that the Sena-

tor knows about. But we constantly have this bickering between the two Houses, and the bureaucracy within the administration whether it is Democratic or Republican.

I think it is time, as I said before, to hotwire this whole thing, put together a commission made up of persons who have previously been cleared with the stature and the capability to address this problem. We are not enlarging the clearance process here—and put some people to thinking what can this country do to stop this onslaught by the Russians on our secrets? This last loss, if I understand it right, has cost the taxpayers billions of dollars. We will now have to duplicate a system that has been literally stolen from us by our own people, and sold for a pittance to the Russians.

I have joined with the distinguished minority leader because, as I have tried to demonstrate here in some of the bills I have introduced, nothing has shocked me more in the 17 years I have been here than the briefing that we recently had on the Walker case. If the distinguished Senator from Minnesota wants to protect the jurisdiction of his committee, I respect him as I respect the distinguished chairman of the Governmental Affairs Committee, and the other committees that are involved. But I do not believe the formation of such a commission to be an attack on the committee system or on the administration. Rather, I think it is an attack on the worst problem this country faces.

The Soviets now have taken secret after secret from us—secret information on systems that has cost us untold billions to develop. Some of them they have bought. I think it is time that we looked at this sieve that we call the security system of the United States—and the only way to do it is with a blue ribbon commission of this kind.

Mr. DURENBERGER. I acknowledge the existence of the question. I started my first talk here a little while ago by eschewing the notion that I was standing up as chairman of the committee, and I felt uncomfortable doing that. There is a former chairman of this committee on the floor who is more capable than I to speak, and eventually he may on this issue.

Our colleague from Alaska brought up the Social Security Commission. That was not resolved by a commission. That was resolved back here some time in January 1983 by the Senator from New York and the Senator from Kansas saying we cannot let this Commission destroy the Social Security System. We have to come to a compromise. So it was done right here by two Senators. That is what happened to that Commission. That is about as simple as I can be to get to the heart of this issue.

It is a matter of taking on the things the Senator from Alaska talked about immediately. We are not conducting a

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superinvestigation. This is a study of a problem we knew existed. We are raising it to the level of public consciousness, and certainly administrative consciousness. We have been learning things in the last couple of weeks about the problems within this bureaucracy that we did not fully appreciate existed. But, finally, people are coming out in one part of the bureaucracy very honestly saying, because the doors are closed, it is not the public speaking inside, but for the first time they have had the opportunity over this billion dollar loss to come in and talk to each other about where some of the problems are in between the bureaucracies. I do not know that that discussion is going to take place in some highfalutin blue ribbon commission the same way it takes place inside this process that is responsible for an outcome. It is for that reason that I believe it is necessary for us to use the existing process, use the opportunity of the sensitivity to the loss to force on this administration the change in their policy, and to provide them with the resources to effect that change.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, I rise in opposition to the amendment. I rise in opposition because I do not believe that it is appropriate to attempt to create a special commission for the purposes outlined in this amendment. I agree with the distinguished chairman of the Intelligence Committee, of which I am a member, is addressing — the serious problems—being faced by this Nation in security matters. I am not of the school that the best approach to solving some of these important problems lies in always creating a new commission. We must address the espionage problem promptly, but I suspect the creation of a new commission will only delay action rather than expedite it. It will take time to form the committee, to bring together the staff necessary to support it, and I think we are in danger of politicizing the issue in the effort to form a commission.

Let me say that, if a commission were going to be created, in my opinion, it would only be proper to give the matter more consideration than can be given to the matter this afternoon. Important decisions would have to be made as to its constitution, its authority, and its legislative jurisdiction. For example it is my understanding—although I have not had the opportunity to carefully study the proposal—that the legislation before us would, subject only to other provisions of this resolution, authorize and direct all departments, agencies, other components, other officials, and employees to extend full and complete cooperation to the commission; provide such information and testimony, whether at hearings or by interview or deposition, as the commission may require;

provide access to all records, writings, documents, and other materials as the commission may request.

This is an extremely broad mandate. It would mean that all the other laws on the books, including the right of privacy, which I have heard so many Members on both sides of the aisle say it is important to protect, would go astray.

It may be that we want to give that broad authority, if we were to create a commission. But I think it is worthy of a little consideration and study before we do so.

It is my feeling that if there is a sense that a commission should be created, it ought to be done through our regular process and referred, with a time limit if necessary, to the appropriate committees so that we could frame the kind of commission that would get the kind of job we all want done.

But, again, I raise the question as to whether such a commission is necessary at this juncture.

Sometime back we created the Intelligence Committees in both the House and the Senate for the purpose of oversight on intelligence matters. You can say what you want to say, but if you create a new commission, you are creating duplication; you are supplanting the duly organized committees of this Congress. I think that, rather than strengthening or helping such committees to discharge their responsibility, we are only weakening them.

I would point out that there was a recent study made by the distinguished Center for Strategic and International Studies, examining the need for governmental, legislative-executive reform. It points out that:

These commissions can be valuable, but it must be recognized that the convening of bipartisan commissions in legislative-executive relations is an extraordinary step for handling extraordinary issues or circumstances. Their use means that the regular procedures of governance have not proved sufficient in some way. There may be occasions on which such commissions are the only practical alternative, given the seriousness of issues, their urgency, and the strength with which opposing views are held—with opposing advocates each having the ability to veto the issues' resolution.

But then it goes on to say:

At the same time, however, the risk arises that the bipartisan commission will come to be seen as a panacea—a means for evading responsibility within either Congress or the executive branch. If that happens, the system will begin progressively to atrophy, and the basic principle of accountability will be increasingly violated to the detriment of the entire government. Thus the use of these commissions must be sparing and highly circumscribed. General rules are needed if their use is not to be abused, and if they are to be a last and not a first resort in developing legislative strategies.

So, Mr. President, I think it is critically important that we give our Intelligence Committee the opportunity to continue on the course upon which it already has embarked. I, like the minority leader, have great confidence

both in the chairman and vice chairman of the Senate Intelligence Committee. I think that the Intelligence Committee should be charged with proceeding with this investigation. If at any time it is felt that there is a need for a special commission, then I think it should be carefully crafted—carefully crafted so that it does not become politicized. While time is of the essence, it is more important that whatever we do be well done and meet the challenge rather than just appear to be creating another commission to handle the hard problem.

I agree as to the seriousness of the problem, as to the need to examine the entire matter. I would point out that both the Intelligence Committee and the Permanent Subcommittee on Investigations, of which I am chairman, and Senator NUNN, the ranking member, have been making careful investigations into these areas.

I would urge the Senate to reject this amendment and to charge the Intelligence Committee, and other committees which have any jurisdiction within this area, to proceed with a careful examination of the issues, not only because it is important from the point of view of security, but from the standpoint of strengthening the committee process.

Mr. GOLDWATER addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. GOLDWATER. Mr. President, I rise to oppose this amendment. I do so with some experience. I served 8 years on the Senate Intelligence Committee, 4 years as chairman.

Mr. President, I have to agree completely with what my friend from Delaware said about commissions. Any careful thought developed after a study of the history of this Congress over any period of time, if you care to examine it, will show that the great mistakes that have been made in this body have been made by commissions or agencies that have been appointed by the Congress.

I do not know why it is but throughout my adult life every time the country develops some kind of a problem that the legislature has been elected to solve, the legislature undertook to appoint some agency to solve the problem, an agency without any responsibility to anybody.

Here we have a commission suggested by a very capable man, for whom I have great respect, but we do not attach to it any particular responsibility.

I would like to say that after many, many years of experience in the intelligence field, going back many years, it takes a long time to learn intelligence. I would say that the members of the Intelligence Committee begin to be able to understand intelligence after about 2 years of service.

I served 8 years on that committee, and I have to admit there are still

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many, many things in intelligence that I would like to learn.

What is our problem?

The Soviets have no problem in Washington obtaining intelligence. We have the Library of Congress. All you have to do is go to the Library of Congress—now it is much easier, you just sit down and punch buttons on a computer—and out comes all of the technical information you want to know. Magazine after magazine after magazine published in this country, published in countries all over the world, make available to anybody with patience the entire technical details of anything that we manufacture. That is one of our major problems we have here.

One of the major problems is we really have no penalties for espionage. I think the last people who were executed in this country were the Rosenbergs and that has been 30 or 35 years ago, or maybe longer than that.

It is impossible, after you detect a person who has stolen secrets from our country, who acted as spies, to do much about it.

We had the case, I recall, when I was serving with the Intelligence Committee, and I will not name the particular device, where information was disclosed by a member of the Intelligence family. He was discharged from his job and that is all that happened to him.

Suppose that man had been executed? I think that is what they are entitled to, and I do not think there should be much question about it.

A lot of people do not like the death penalty. I would rather see a man shot than have him stealing the secrets of my country and jeopardizing the freedoms not only of myself but my family.

Money has entered into this. Before the developments disclosed in the Walker case, normally, a man or woman would make available to our enemies intelligence because they did not like us and they liked the other country better. Now we have a new enticement. It is called money. Where the Soviets and other enemies used to get this information for nothing, now a few hundred thousand dollars will accomplish the job.

How do you overcome that, Mr. President? What will the Commission answer be to that? I have no idea. I know that the Intelligence Committee is looking into that.

Another problem that anybody is going to be faced with when they get into this area is the number of clearances that we have for top secret and code-word, even. I think it is something like 4 million.

I know that my friend from Delaware, who sits on the Intelligence Committee—I will not say he becomes amused, but he probably has a great question pop up in his mind when we say, "Well, we will clear the room" and nobody walks out. Here is a bunch of nice young people, probably just out of high school, who have just come to

work for the Government, cleared for code-word, cleared for top secret.

I recall trying to get one of the founders of the CIA clearance, top secret clearance. It took 6 months. It takes for a new employee of my office, if I want to get one cleared, almost a telephone call will do it.

I am happy to yield to my friend from Delaware.

Mr. ROTH. Mr. President, I just want to make one quick observation. I have heard several times that we have used commissions, for example, in the case of Social Security and other matters. Let me point out, there is a very important difference between the Social Security situation and the one we face today. One of the purposes of creating a commission on Social Security was to develop a political consensus and bipartisan support for reform. It was felt that that purpose could be accomplished only by developing a bipartisan group that would work together to formulate the recommendations that were necessary to make that system financially sound.

I do not think we need any consensus today. I think we already have a consensus that we must protect our intelligence information. Today we are trying to find out what has gone wrong and what needs to be done to correct it. I am sure that everyone on this floor, be they Republicans or Democrats, will support measures to protect national security. So we already have that consensus.

But let our fact-finding groups, such as our Intelligence Committee, proceed to determine what those steps should be. Then I think Congress and the Senate will promptly act.

Mr. GOLDWATER. Mr. President, I could not agree more with my friend from Delaware. Again, I think he has brought up—well, I know I can get a lot of argument on this point, but I have to mention it: Did the Social Security Commission really solve the problem? I do not think so. I think Social Security is in God-awful shape. So if we want to get intelligence in a little worse shape, we might use the same approach.

We have a very large intelligence family. This is something very few people in this country know. We have 19 different intelligence-gathering agencies in Washington. They all have these problems. Every one of them has the problem of a leak here and a leak there.

The Senator from Delaware is as aware as I am of the constant leaking from the Intelligence Committee, as desperately as we try to prevent it.

We used to have hearings and if I wanted to find out what happened in a code-word-clearance meeting, I would just read the New York Times the next morning. And one of those guys winds up as Assistant Secretary of State. I guess maybe we ought to appoint a few more like that; we would get some real leaks.

Mr. President, I have one more comment, because I know of the great interest in this subject. I am pointing out things that I have learned on the Intelligence Committee and I have learned without being on it. We allowed the Soviet Embassy to build their new building on one of the highest points in Washington. Sometime, if you want a real thrill, get in a helicopter and fly over that place. They have more antennae on the roof of that embassy than Marconi ever thought of. They can spy, they can listen in on any telephone conversation in this community. Twelve hundred people—I think that is about the number—in the Soviet Embassy.

Do you know how many we have in Russia, Mr. President? I am not sure, but it is not much over 200. We have a law on the books that says no country can have more representatives in their embassy than we have in their country and we have begged and begged the administrative branch of this Government to chase all the Soviets out of this town and San Francisco and Los Angeles and Chicago and Boston and everywhere else where the thousands of them are—not just listening in on telephone conversations, but stealing secrets of our Government.

I think there are a lot of remedies available. If we get the administrative branch to act as they should, I think we could clear that Soviet Embassy out in a very big hurry. If we want to put in some counterelectronic devices around that Embassy, there is no rule that we cannot do that. I live only 2 blocks from it and I can give them a lot of trouble with my radio equipment. I might do it some night.

Well, Mr. President, I oppose this amendment, with all due respect to my very good friend from West Virginia. I just do not think it is needed. I think the Intelligence Committee has the full capability of coming up with whatever answers are not already in existence. I would like to see them given the chance. Let us not create another commission that will just fumble and tumble and rumble along without doing anything.

Mr. President, I yield the floor.

Mr. BYRD. Mr. President, will the distinguished Senator from Delaware yield the floor?

Mr. ROTH. Yes; Mr. President.

Mr. BYRD. I should like to respond very briefly to his statement.

Incidentally, I say to the distinguished Senator from Arizona [Mr. GOLDWATER], that nobody is more supportive than I of execution of an American who commits treason, but the Supreme Court has ruled that a mandatory death sentence is not constitutional. At the present time, as I recall, the Court has, as one of the options, a term of years, and I believe it also has the option of a life sentence. But we all know that those so-called "life sentences" in many instances can



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mean a few years in prison, and then there can be a parole.

The other day, when the Department of Defense authorization bill was before this body, I offered an amendment that was cosponsored by the distinguished Senator from South Carolina (Mr. Thurmond) that would provide an additional option—that of mandatory life sentence without parole. So that would be an option in the future if the other body agrees. If the court will not choose the option of execution, it at least has the option, provided by my amendment to the DOD authorization bill, of salting the traitor away for the rest of his life behind bars. If a judge chooses that option, then the wretched "Benedict Arnold" would be imprisoned for life with no hope of parole.

I hope the House will accept my amendment on that score. We can expect the Soviets to have persons in this country who will spy on us, but what we should not have to expect is an American citizen who forgets his heritage, forgets his patriotism, and sells his country for a few measly dollars. In that case, if he can not be executed, then at least let him have the rest of his life behind bars where he will not be able to enjoy the fistful of money that he may have been given for betraying his country.

Now, Mr. President, the distinguished senior Senator from Delaware had this to say, and I think I am quoting him correctly. If I am not, he certainly may correct me. I believe he said that it was "proper to give the idea more consideration than can be given here on the floor," and he went on to say that "if there is need for such a commission it should be done through the regular process and referred to the proper committee."

I think it is appropriate to argue that this matter or other matter which may come up on the floor by way of an amendment should be first referred to the appropriate committee for consideration. I do not find fault with that at all. I, however, think that it would be well for the distinguished Senator from Delaware to be reminded, in the event he does not remember, of a letter which I wrote to him in 1984. I had introduced legislation which would require the reconfirmation of Department heads in the event a President were to be elected to a second term and were to wish that the same Department heads who had served in his previous administration would continue in the same capacity during a second administration. The legislation was to be prospective in nature and would not have applied to the current administration. Before confirming such Department heads for a second term, the Senate would take a new look at a Department head and hold him to account for some of his actions or inactions in the previous term. And so I wrote to the distinguished Senator from Delaware and urged that he schedule hearings on this measure.

The letter is dated May 2, 1984, and it is addressed to the distinguished chairman of the Committee on Governmental Affairs. Here is what I said:

DEAR MR. CHAIRMAN: I am writing to request that you schedule hearings in the near future on two pieces of legislation which I recently introduced, S. 2446 and S. 2604. Both bills involve a long overdue effort to improve the Senate confirmation process.

The "Senate Confirmation Act of 1984," S. 2446, grew out of my continuing concern that the Senate has not been getting adequate information upon which to fulfill its "advice and consent" function under Article II of the U.S. Constitution. On many occasions, we have seen situations where new information concerning a nominee for high government office came to light only after the nomination had been received by the Senate and the confirmation hearings had begun. On other occasions, the Senate was unaware of such data until even after the nominee had actually been confirmed.

It seems to me that these kinds of problems evidence a fundamental flaw in the confirmation process, attributable in part to an incompleteness in the background investigations conducted by the Executive Branch and, thereafter, to the incompleteness of the information provided to the appropriate Senate committees.

My legislation, S. 2446, attempts to address this problem, first, by placing the supervision of background investigations in an independent office of government, namely the Office of Government Ethics. Once those investigations are completed, the bill would also require that the Senate be provided with the full and complete results of those inquiries. In addition, my proposal would require, for the first time, the promulgation of standards for the conduct of these background investigations, so as to insure that all relevant information is ascertained concerning a prospective nominee's fitness and qualifications for office.

I have also included in S. 2446 a so-called "fail-safe" provision to cover situations where, despite our best efforts, some previously unknown information later comes to light even after a nominee has been confirmed. This provision would require that if a president is reelected to a second term, the 20 top officials of his administration would have to be reconfirmed if they are to continue in office during a president's second term. In that way, any newly discovered information could provide a new basis upon which the Senate could discharge its Article II responsibilities.

The second bill I have introduced, S. 2604, is identical to the reconfirmation provision of S. 2446. It results from my conclusion that a second confirmation process for the 20 top officials of government during a president's second term is so essential that it is deserving of special attention by the Senate on its own merits, separate and apart from the other provisions of S. 2446, which deal with the overall confirmation process. I feel very strongly that members of the Cabinet and a small number of other high-level officers of government should be willing to submit their performances in office to renewed Article II scrutiny if they are to remain in the same posts during a second presidential term. Under the present system, only a president and vice president are accountable to the electorate, and we should again fulfill our "advice and consent" responsibilities so as to express the people's will concerning the 20 top officers of a two-term administration.

Your Committee has played a significant role in insuring the effectiveness of our gov-

ernment institutions. I am well aware of your efforts to improve the Ethics in Government Act during the last Congress and to resist some of the suggestions which were made to weaken that law. I hope you will agree that the proposals which are embodied in my legislation are deserving of attention and consideration, and that you will be willing to process these bills during the current Session.

Your assistance would be appreciated.

Sincerely,

ROBERT C. BYRD

Well, time went on and I received no response, and so I wrote a second letter on May 21, and addressed it to the distinguished Senator and it said this:

DEAR MR. CHAIRMAN: In my letter of May 2, I requested that hearings be scheduled on two pieces of legislation which I had recently introduced, S. 2446 and S. 2604, both involving an effort to improve the Senate confirmation process.

I am still of the view that the enactment of these measures is essential during the current session, and I would appreciate your letting me know whether you will be able to process these bills in your Committee this year.

Sincerely,

ROBERT C. BYRD

In a postscript, I said:

Bill, I hope you can schedule a hearing soon. Thank you.

That was May 31.

On June 18, 1984, I received the following letter from the distinguished Senator:

Thank you for contacting me concerning the two bills you have introduced on the Senate confirmation process. I apologize for the delay in getting back to you.

I must tell you in all honesty that I have serious problems with your legislation. I understand your objectives, but I believe that others, of either political party, may well see this opportunity for political purposes. I strongly agree with Lloyd Cutler that we have very serious problems in making government work, and I believe that if this legislation is implemented it could well have a chilling effect on the departments.

For example, S. 2604 would require the top twenty officials of an Administration to be reconfirmed by the Senate if they were to remain in office during a President's second term. Because the incumbent nominee would have a record of service in office during his first term, I am concerned a reconfirmation hearing could become nothing more than a forum to debate the past policies of an Administration. By prolonging the process, a few individuals could, for purely political purposes, effectively hamstring departments for a substantial period of time by calling into question whether the chiefs of those organizations will remain in place. The result could well be government paralysis at the very time that a President has just received a new mandate.

I think that committees have a responsibility to scrutinize carefully the qualifications and moral background of any nominee for high office. Further, the appropriate committee should continue to monitor the conduct of individuals, and, of course, hold hearings anytime on their activities.

Mr. President, I can respect, do respect, and did respect the argument that was made by the distinguished



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chairman in his response to my two letters and my oral and personal request of him here on the floor. I have no quarrel at all with the position he took in opposition to the legislation. But the last paragraph is a paragraph I want the Senator to recall.

In short, I would think your legislation would have a deleterious effect on the functioning of the Executive Branch, and, thus, I do not plan to hold hearings on the legislation. Thanks again for letting me know of your serious concerns over this issue, and I again apologize for being so tardy in responding.

Sincerely,

WILLIAM V. ROTH, JR.

The Senator certainly had a right to his viewpoint in opposition to the legislation I introduced. But I offered the legislation. It was referred to his committee. I wrote to the distinguished Senator, urging him to give that legislation a hearing. I wrote a second time. I talked with him on the floor, right here in the aisle, about the legislation and indicated that I hoped a hearing would be held on my bills.

Finally, I get a letter back which not only expresses to me his opposition—which was fine; that is all right; I do not agree with every other Senator, nor does every other Senator agree with me many times—but also, he spurned my request for the hearing on the legislation which had been introduced and duly referred to his committee.

Mr. President, I have been around the Senate 27 years and in the House 6 years. Never do I remember any other situation in which a chairman of a committee refused a colleague the respect and the opportunity to which I think a colleague is entitled—to have a hearing on his or her legislation if requested.

Today, the distinguished chairman suggests that this is the kind of matter that should be referred to a committee. I introduced a resolution a few days ago which would provide for such a commission as does the amendment I offer today, except for a couple of modifications I have made on the floor, at the request of the distinguished chairman of the Appropriations Committee, Mr. HATFIELD, and the distinguished Senator from Alaska [Mr. STEVENS]. That resolution was referred to the distinguished chairman's committee.

Now the distinguished chairman comes to the floor and says that this commission is a matter, if we are going to create it, that should be done in the usual way. It should be referred to a committee. How can I have any hope that the committee, under the chairmanship of the very distinguished Senator—in light of my previous experience—will hold hearings on this legislation? In other words, if he is opposed to it, he would not even conduct a hearing on it.

Mr. President, with all due respect to my beloved colleague from Delaware, I think this could be perceived as a rather arrogant way for a chair-

man to treat an important piece of legislation that is duly referred to his committee under the rules—legislation concerning which a colleague writes to him twice and personally, in a conversation, urges hearings; and the committee chairman turns down his colleague's request to have a hearing on it.

I am sorry to have to bring this to the attention of the Senate; but if that is the way the distinguished chairman is going to handle my requests for hearings on my bills, the only recourse I have is to offer the subject matter as an amendment to a vehicle which comes up on the floor. I say to the distinguished chairman that I have been watching for a vehicle since that time to which I might offer the amendment dealing with the reconfirmation process. If I cannot get a hearing in his committee, then I will let the Senate be the judge, and I will get my hearing on this floor.

I am sorry to have to bring to the attention of the chairman this correspondence between the two of us, but I have no alternative, inasmuch as he makes this argument today against the pending amendment: Send it to the committee. Let us have a hearing. Let the committee deal with it.

I tried that once and got nowhere.

I must say that never, as chairman of a committee, would I deny a colleague who requested a hearing in committee.

Mr. ROTH. Mr. President, will the Senator yield?

Mr. BYRD. Yes, I am happy to yield. I should like to hear the distinguished Senator respond to what I have said, based on the letters he wrote to me.

Mr. ROTH. First, let me say, of course—and I think my colleague will agree—that I always try to be cooperative, to accommodate my colleagues. I have to say, respectfully, that it has been experience that I do not always get a hearing on every bill I introduce, and I understand that. I understand that committees' resources are limited and that priorities must be set. In this case, I would point out that we had no other request, including anyone on that committee that I am aware of, from either political side for such a hearing.

But in any event, let me assure the distinguished minority leader that if the proposition he has placed before the Senate today were to be referred to the committee, I would be pleased to hold such hearings.

I think this matter is a matter of great importance, and I am not suggesting that his other bill was not, but I point out that we have something I think like 300 bills referred to the committee each year, and we do not hold hearings on each one of them but attempt to respond normally to hearing requests from within the committee itself. Perhaps that was a mistake in this instance. In any event I apologize. It was not intended in any way to

be discourteous to the minority leader for whom I have the greatest respect.

I do say and do offer that if the distinguished minority leader would like to hold hearings on his important proposal to create a commission on espionage, I would be happy to proceed with such hearings at an early date and do so.

As I said in my earlier statement I think that, if we were to go this direction, we should hold careful hearings and carefully craft our recommendations to meet the situation at hand.

So, I say to the distinguished senior Senator from West Virginia, if he cares to hold hearings on this subject, he has my personal assurance and I am sure that of the distinguished minority ranking member of the committee TOM EAGLETON, to hold such hearings at the earliest possible date.

I make that in the form of a question.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Delaware. I thank him for his apology. It takes a big man to apologize, and I respect him for that. Therefore, so far as I am concerned, that matter is now behind us.

Mr. President, I am ready to vote.

Mr. WILSON. Mr. President, I wonder if I might address a question to my distinguished friend, the minority leader.

Mr. BYRD. I am happy to try to answer the question.

Mr. WILSON. The question is this: Having listened with interest to the Senator's stated desire for a hearing on his measure and understanding and sympathizing with that, I have a concern that if this commission, which he proposes, is created and if it is to be in business for an 18-month period before making its report, some may argue that any effort to address individual problems relating to espionage and security, for example, measures brought before the Intelligence Committee, measures brought before the Armed Services Committee, might find that there is some bar to their being heard, precisely because of the existence of such a commission.

It would disturb me greatly and I suspect many of my colleagues if this turned out to be the case, because it may very well be that the proposals will be introduced certainly within the 18-month period and in fact I know of some that are proposed for hearing now, one in a subcommittee which I chair. Others I suspect will be.

Would the Senator, if this measure were adopted, feel that the existence of such a commission should stand as a reason not to go forward with proposals offered by his colleagues in the form of bills that are referred to other committees?

Mr. BYRD. Mr. President, I think the resolution speaks for itself and I think that the appropriate arguments have been made on the floor in support of it.

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I see no reason to delay action on this matter. The country cries out for an effort to find the answer to this difficult and dangerous problem that confronts the Nation. I would hope that the Senate will adopt the amendment so that it might go to conference with the other body, and as I say I am ready to cast a vote on it.

Mr. WILSON. Mr. President, with all due respect, I do not think my friend from West Virginia really answered my question. So I will simply state as a concern, and I think a very legitimate one, the fear that were this measure enacted, were this commission created, there would thereafter be many on this floor and many off this floor who would say we dare not go forward with any other proposal because, of course, the definitive work is being done by the commission and we must await the result of their deliberation.

I suppose, Mr. President, that if I felt the need for a special commission of this kind, I might be persuaded that such a delay was wise. But it seems to me that there are resources available to standing committees of this body and of the other body, the House of Representatives, that make it possible for us to act deliberately and yet not delay in a time when we are quite understandably concerned with problems of security and espionage.

Mr. BYRD. Mr. President, will the distinguished Senator yield?

Mr. WILSON. I yield for a question. I am delighted to so yield.

Mr. BYRD. Not necessarily for a question, if I could just have a moment in which to respond to the theme of his argument.

Mr. WILSON. That would please me, and I am happy to yield, retaining the floor, yes.

Mr. BYRD. Mr. President, the distinguished Senator I would hope would not feel that the adoption of this amendment and the creation of such a commission would cause Senators or committees to delay efforts they wish to make to pursue this subject matter.

Earlier today, I said, I believe in response to the distinguished chairman of the Committee on Intelligence, that this should not be looked upon as an interference with his committee, its rights, duties, responsibilities, and powers. That committee could quite appropriately proceed with its own agenda.

I would not see the appointment of the commission as any reason or justification for any Member or committee to just lay back and say, "Well, the commission is doing its work, we should not or we will not proceed within the purview of our own powers and responsibilities." I see no problem there at all.

I hope that answers the Senator's question, and I apologize if I did not respond to his question earlier on the point. My thoughts were distracted while he was speaking.

Mr. WILSON. I thank my friend from West Virginia, and I am reassured that he personally will raise no such objection. However, Mr. President, I am not reassured that his reaction would be universal. Indeed very much to the contrary, I think our experience has been that when we create commissions it is generally for the purpose of gaining an expertise, a point of view that somehow seems denied to the Members of this body, notwithstanding the resources that are available to us.

I think we have in recent memory the experience of the Scowcroft Commission which was an extraordinarily valuable asset, one that did bring a certain deliberation to a process that we found useful, useful in a way that required the creation of such a commission.

I do not decry the creation of commissions where there seems a need.

It seems to me in this instance, Mr. President, there is not such a need and that rather than doing good we would be delegating a responsibility that is properly ours and one for which we are equipped, one for which outside resources are readily available.

So notwithstanding the Senator's personal assurance that he would raise no such objection, I fear that it would be raised as a bar upon the part of others, and for that reason, reluctantly joining in his concern, I think we would address that concern best by simply proceeding to hear measures that will be before other committees of the Senate.

I thank the Chair.

Mr. DENTON. Mr. President, we all share the concern of the minority leader and those who join with him in cosponsoring this amendment with respect to the fabric of our espionage laws as they may be applied to specific cases. Having said that, I must also add that I do not believe that yet another Commission is the answer to our problems.

Mr. President, we have at this time two very well staffed intelligence oversight committees, one in each of the respective Houses of the Congress. Moreover, in the Judiciary Committee we have a Subcommittee on Security and Terrorism which has within its mandate oversight of the espionage laws of the United States. In addition, Mr. President, we have a Permanent Subcommittee on Investigations which has only recently completed extensive hearings on the problems inherent in our system of issuing security clearances. To the best of my knowledge, the results of those hearings have yet to be fully evaluated.

Moreover, Mr. President, we have a Director of Central Intelligence, an Intelligence Oversight Board, a National Security Council, interagency working groups, and a host of other entities concerned with the adequacy of our laws relative to national security.

Mr. President, all this is by way of saying that the solution to the prob-

lem does not lie with the creation of a new bureaucracy. We have debated time and again the appropriateness of the use of the polygraph to assist in the screening of those who have access to highly classified information and I must say that some of those who are prominent in the sponsorship of this particular amendment have been equally prominent in efforts to inhibit further use of that important investigative tool. In closing, Mr. President let me say that I am informed that major reviews are already underway and the President is awaiting recommendations of his senior national security advisors on additional steps that should be taken. In particular an ad hoc interagency group with senior Cabinet level involvement will recommend specific implementing actions to the President.

Recommendations from prolonged consideration of the espionage and counterintelligence issues over the past 4 years are already being implemented.

The Intelligence and Armed Services Committees of the Congress have already looked into these matters at considerable depth and will continue to apprise of new developments. They have also begun the process of suggesting improved statutory authorities for Government agencies and the reallocation of resources toward areas where they are needed.

At this critical time it is imperative not to divert intelligence resources to a comprehensive investigation that would expose a widening circle of people to the extremely sensitive techniques and sources of counterintelligence and counterespionage.

It is for this reason that I oppose passage of this amendment.

Thank you, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN] is necessarily absent.

I also announce that the Senator from New York [Mr. MOYNIHAN] is absent because of a death in the family.

I further announce that, if present and voting, the Senator from New York [Mr. MOYNIHAN] would vote "aye."

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced yeas 48, nays 50, as follows:

(Rollcall Vote No. 130 Leg.)

YEAS—48

Andrews	Burdick	Eagleton
Baucus	Byrd	Exon
Bentsen	Chiles	Ford
Biden	Cranston	Glenn
Bingaman	DeConcini	Gore
Bradley	Dixon	Harkin
Bumpers	Dodd	Hart

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Hatfield	Matsunaga	Rockefeller
Heflin	Melcher	Rudman
Inouye	Metzenbaum	Sarbanes
Johnston	Mitchell	Sasser
Kennedy	Nunn	Simon
Kerry	Pell	Stennis
Lautenberg	Proxmire	Stevens
Leahy	Pryor	Warner
Levin	Riegle	Zorinsky

## NAYS—50

Abdnor	Gramm	McConnell
Armstrong	Grassley	Murkowski
Boschwitz	Hatch	Nickles
Chafee	Hawkins	Packwood
Cochran	Hecht	Pressler
Cohen	Helms	Quayle
D'Amato	Hollings	Roth
Danforth	Humphrey	Simpson
Denton	Kassebaum	Specter
Dole	Kasten	Stafford
Domenici	Laxalt	Symms
Durenberger	Long	Thurmond
East	Lugar	Tribble
Evans	Mathias	Wallop
Garn	Mattingly	Weicker
Goldwater	McClure	Wilson
Gorton		

## NOT VOTING—2

Moynihan

## CONGRESSIONAL RECORD — SENATE

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or, from his work with the Senator from Idaho, will be able to settle the question. Then we will have a number of other amendments that we can raise which I believe can be handled in a very expeditious way. I am hopeful that we can complete this bill sometime in the late afternoon, unless we run into some unforeseen issues which have not yet been laid before the managers of the bill.

We will ask Senators to be on the floor because I believe we can dispose of many of these amendments in a very quick way. We have cleared a number of them already with individual Senators which we can handle immediately.

I just wanted to lay before the Senate the possibility of completing this bill in the late afternoon.

At this point, unless the Senator from Alaska wishes me to yield, I will ask unanimous consent to set aside the committee amendment in order to be able to offer other amendments.

Mr. STEVENS. Mr. President, I wanted to make a comment.

Mr. HATFIELD. Mr. President, I yield to the Senator from Alaska for his comment and then I will make the request to set aside the committee amendment in order to get on with the business of other amendments that Senators have.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I regret the fact that this last vote has been a fairly partisan vote. I hope the Senate realizes that this amendment will be back in another form.

I want to call to the attention of the Senate the fact that I think in the last 5 years the Intelligence Committee has been able to get an authorization bill in only 3 of those years. We have not had any really close cooperation with the House or with the administration in dealing with either matters of security or terrorism. I believe that it is time for us to show the really great concern of the country in these two subjects by organizing a body which will unite the House, the Senate and the administration to pursue the question of the adequacy of our laws to protect not only our security but our Nation against terrorism.

Mr. HATFIELD. Mr. President, I now ask unanimous consent to lay aside temporarily the pending committee amendment in order that Senators may offer other amendments.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

## AMENDMENT NO. 371

(Purpose: To appropriate \$110,000,000 for the emergency food and shelter program)

Mr. DIXON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois (Mr. DIXON) himself, Mr. HEINZ, Mr. SARBANES, Mr. LEY, Mr. MOYNIHAN, Mr. KERRY, Mr. GORTON, Mr. KERRY, and Mr. MATHIAS proposes an amendment numbered 371.

Mr. DIXON. Mr. President, unanimous consent that furthering of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 92, between lines 14 and 15, insert the following:

## EMERGENCY FOOD AND SHELTER PROGRAM

There is hereby appropriated \$110,000,000 to the Federal Emergency Management Agency, to remain available until September 30, 1988, to carry out an emergency food and shelter program. Notwithstanding any other provision of this or any other law, such amount shall be made available in accordance with the terms and conditions of the following paragraphs:

The Director of the Federal Emergency Management Agency shall, as soon as practicable after enactment of this Act, constitute a national board for the purpose of determining how the program funds are to be distributed to individual localities. The national board shall consist of seven members: The United Way of America, the Salvation Army, the National Council of Churches in Christ in the U.S.A., the National Conference of Catholic Charities, the Council of Jewish Federations, Inc., the American Red Cross, and the Federal Emergency Management Agency shall each designate a representative to sit on the national board. The representative of the Federal Emergency Management Agency shall chair the national board.

Each locality designated by the national board to receive funds shall constitute a local board for the purposes of determining how its funds will be distributed. The local board shall consist, to the extent practicable, of representatives of the same organizations as the national board except that the mayor or appropriate head of government will replace the Federal Emergency Management Agency member.

The Director of the Federal Emergency Management Agency shall award a grant for \$110,000,000 to the national board within thirty days after enactment of this Act for the purpose of providing emergency food and shelter to needy individuals through private voluntary organizations and through units of local government.

Eligible private voluntary organizations should be nonprofit, have a voluntary board, have an accounting system, and practice nondiscrimination.

Participation in the program should be based upon a private voluntary organization's or unit of local government's ability to deliver emergency food and shelter to needy individuals and such other factors as are determined by the local boards.

Total administrative costs shall not exceed 2 per centum of the total appropriation.

As authorized by the Charter of the Community Credit Corporation, the Corporation shall process and distribute surplus food owned or to be purchased by the Corporation under the food distribution and emergency shelter program in cooperation with the Federal Emergency Management Agency.

Mr. DIXON. Mr. President, I rise today for the purpose of offering an

So the amendment (No. 368), as further modified, was rejected.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. DOLE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, if I could have order in the Senate, I would like to say that we have a committee amendment that is the pending question.

Mr. BYRD. Will the distinguished Senator yield?

Mr. HATFIELD. I yield.

Mr. BYRD. We still have my amendment in the first degree. It is all right with me if the distinguished chairman wishes to ask unanimous consent to vitiate the order for the yeas and nays. I do not think there will need to be another rollcall vote.

Mr. HATFIELD. Mr. President, I stand corrected. The Democratic leader is correct. His amendment in the first degree is the pending question.

I yield to the Senator for whatever he wishes to do on that. It would be satisfactory on our side to vitiate the order for the yeas and nays.

Mr. BYRD. I make that request, Mr. President.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The question is on agreeing to the amendment.

The amendment (No. 367) was rejected.

Mr. HATFIELD. Now, Mr. President, I believe we are on the track where the committee amendment is the pending question. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. HATFIELD. I am hopeful that the Senator from Arizona will shortly present either a substitute amendment